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6 UNITED STATES DISTRICT COURT  
7 CENTRAL DISTRICT OF CALIFORNIA  
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9

10 CATHAY BANK,  
11 Plaintiff,

12 v.

13 JPMORGAN CHASE BANK,  
14 Defendant.  
15

No. CV08-06404 PA E

STIPULATED PROTECTIVE ORDER

1           **1. PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this litigation  
5 would be warranted. Accordingly, the parties hereby stipulate to and petition the  
6 court to enter the following Stipulated Protective Order. The parties acknowledge  
7 that this Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords extends only to the limited information or  
9 items that are entitled under the applicable legal principles to treatment as  
10 confidential. The parties further acknowledge, as set forth in Section 10, below, that  
11 this Stipulated Protective Order creates no entitlement to file confidential information  
12 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and  
13 reflects the standards that will be applied when a party seeks permission from the  
14 court to file material under seal.  
15

16           **2. DEFINITIONS**

17           2.1   **Party**: any party to this action, including all of its officers,  
18 directors, employees, consultants, retained experts, and outside counsel (and  
19 their support staff).  
20

21           2.2   **Disclosure or Discovery Material**: all items or information,  
22 regardless of the medium or manner generated, stored, or maintained (including,  
23 among other things, testimony, transcripts, or tangible things) that are produced or  
24 generated in disclosures or responses to discovery in this matter.  
25

26           2.3   **"Confidential" Information or Items**: information (regardless of  
27 how generated, stored or maintained) or tangible things that qualify for protection  
28 under standards developed under F.R.Civ.P. 26(c).

1           2.4    "Highly Confidential – Attorneys' Eyes Only" Information or  
2 Items: extremely sensitive "Confidential Information or Items" whose disclosure to  
3 another Party or non-party would create a substantial risk of serious injury that could  
4 not be avoided by less restrictive means.

5           2.5    Receiving Party: a Party that receives Disclosure or Discovery  
6 Material from a Producing Party.

7           2.6    Producing Party: a Party or non-party that produces Disclosure or  
8 Discovery Material in this action.

9           2.7.   Designating Party: a Party or non-party that designates  
10 information or items that it produces in disclosures or in responses to discovery as  
11 "Confidential" or "Highly Confidential - Attorneys' Eyes Only."

12           2.8    Protected Material: any Disclosure or Discovery Material that is  
13 designated as "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

14           2.9.   Outside Counsel: attorneys who are not employees of a Party but  
15 who are retained to represent or advise a Party in this action.

16           2.10   House Counsel: attorneys who are employees of a Party.

17           2.11   Counsel (without qualifier): Outside Counsel and House Counsel  
18 (as well as their support staffs).

19           2.12   Expert: a person with specialized knowledge or experience in a  
20 matter pertinent to the litigation who has been retained by a Party or its counsel to  
21 serve as an expert witness or as a consultant in this action and who is not a past or a  
22 current employee of a Party or of a competitor of a Party's and who, at the time of  
23 retention, is not anticipated to become an employee of a Party or a competitor of a  
24 Party's. This definition includes a professional jury or trial consultant retained in  
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28

1 connection with this litigation.

2           2.13 Professional Vendors: persons or entities that provide litigation  
3 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
4 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
5 their employees and subcontractors.  
6

7  
8           3. SCOPE

9           The protections conferred by this Stipulation and Order cover not only Protected  
10 Material (as defined above), but also any information copied or extracted therefrom,  
11 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
12 conversations, or presentations by parties or counsel to or in court or in other settings  
13 that might reveal Protected Material.  
14

15  
16           4. DURATION

17           Even after the termination of this litigation, the confidentiality obligations  
18 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
19 in writing or a court order otherwise directs.  
20

21           5. DESIGNATING PROTECTED MATERIAL

22           5.1 Exercise of Restraint and Care in Designating Material for  
23 Protection. Each Party or non-party that designates information or items for  
24 protection under this Order must take care to limit any such designation to specific  
25 material that qualifies under the appropriate standards. A Designating Party must  
26 take care to designate for protection only those parts of material, documents, items, or  
27 oral or written communications that qualify - so that other portions of the  
28

1 material, documents, items, or communications for which protection is not warranted  
2 are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routine designations are prohibited.

4 Designations that are shown to be clearly unjustified, or that have been made for an  
5 improper purpose (e.g., to unnecessarily encumber or retard the case development  
6 process, or to impose unnecessary expenses and burdens on other parties), expose the  
7 Designating Party to sanctions.  
8

9 If it comes to a Party's or a non-party's attention that information or  
10 items that it designated for protection do not qualify for protection at all, or do not  
11 qualify for the level of protection initially asserted, that Party or non-party must  
12 promptly notify all other parties that it is withdrawing the mistaken designation.  
13

14 5.2 Manner and Timing of Designations. Except as otherwise provided  
15 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise  
16 stipulated or ordered, material that qualifies for protection under this Order must be  
17 clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (apart from transcripts of  
20 depositions or other pretrial or trial proceedings), that the Producing Party affix the  
21 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
22 ONLY" at the top of each page that contains protected material. If only a portion or  
23 portions of the material on a page qualifies for protection, the Producing Party also  
24 must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
25 the margins) and must specify, for each portion, the level of protection being asserted  
26 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
27  
28

1 ONLY”).

2 A Party or non-party that makes original documents or materials  
3 available for inspection need not designate them for protection until after the  
4 inspecting Party has indicated which material it would like copied and produced.  
5 During the inspection and before the designation, all of the material made available  
6 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY.” After the inspecting Party has identified the documents it wants  
8 copied and produced, the Producing Party must determine which documents, or  
9 portions thereof, qualify for protection under this Order, then, before producing the  
10 specified documents, the Producing Party must affix the appropriate legend  
11 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
12 ONLY”) at the top of each page that contains Protected Material. If only a portion or  
13 portions of the material on a page qualifies for protection, the Producing Party also  
14 must clearly identify the protected portion(s) (e.g., by making appropriate markings in  
15 the margins) and must specify, for each portion, the level of protection being asserted  
16 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY”).  
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21 (b) for testimony given in deposition or in other pretrial or trial  
22 proceedings, that the Party or non-party offering or sponsoring the testimony identify  
23 on the record, before the close of the deposition, hearing, or other proceeding, all  
24 protected testimony designated as CONFIDENTIAL, and further specify any portions  
25 of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’  
26 EYES ONLY.” When it is impractical to identify separately each portion of  
27 testimony that is entitled to protection, and when it appears that substantial portions  
28

1 of the testimony may qualify for protection, the Party or non-party that sponsors,  
2 offers, or gives the testimony may invoke on the record (before the deposition or  
3 proceeding is concluded) a right to have up to 20 days to identify the specific portions  
4 of the testimony as to which protection is sought and to specify the level of protection  
5 being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -  
6 ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are  
7 appropriately designated for protection within the 20 days shall be covered by the  
8 provisions of this Stipulated Protective Order.  
9

10 Transcript pages containing Protected Material must be separately  
11 bound by the court reporter, who must affix to the top of each such page the legend  
12 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES  
13 ONLY," as instructed by the Party or non-party offering or sponsoring the witness or  
14 presenting the testimony.  
15

16 (c) for information produced in some form other than  
17 documentary, and for any other tangible items, that the Producing Party affix in a  
18 prominent place on the exterior of the container or containers in which the  
19 information or item is stored the legend "CONFIDENTIAL" or "HIGHLY  
20 CONFIDENTIAL - ATTORNEYS' EYES ONLY." If only portions of the  
21 information or item warrant protection, the Producing Party, to the extent practicable,  
22 shall identify the protected portions, specifying whether they qualify as  
23 "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."  
24

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
26 failure to designate qualified information or items as "Confidential" or "Highly  
27 Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating  
28



1 Party's right to secure protection under this Order for such material. If material is  
2 appropriately designated as "Confidential" or "Highly Confidential – Attorneys' Eyes  
3 Only" after the material was initially produced, the Receiving Party, on timely  
4 notification of the designation, must make reasonable efforts to assure that the  
5 material is treated in accordance with the provisions of this Order.  
6

## 7 8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
10 Party's confidentiality designation is necessary to avoid foreseeable substantial  
11 unfairness, unnecessary economic burdens, or a later significant disruption or delay of  
12 the litigation, a Party does not waive its right to challenge a confidentiality designation  
13 by electing not to mount a challenge promptly after the original designation is  
14 disclosed.  
15

16 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
17 Designating Party's confidentiality designation must do so in good faith and must  
18 begin the process by conferring directly (in voice to voice dialogue; other forms of  
19 communication are not sufficient) with counsel for the Designating Party. In  
20 conferring, the challenging Party must explain the basis for its belief that the  
21 confidentiality designation was not proper and must give the Designating Party an  
22 opportunity to review the designated material, to reconsider the circumstances, and, if  
23 no change in designation is offered, to explain the basis for the chosen designation. A  
24 challenging Party may proceed to the next stage of the challenge process only if it has  
25 engaged in this meet and confer process first.  
26

27 6.3 Judicial Intervention. A Party that elects to press a challenge to a  
28 confidentiality designation after considering the justification offered by the



1 Designating Party may file and serve a motion under Civil Local Rule 37-2 that  
2 identifies the challenged material and sets forth in detail the basis for the challenge.  
3 Each such motion must be accompanied by a competent declaration that affirms that  
4 the movant has complied with the meet and confer requirements imposed in the  
5 preceding paragraph and that sets forth with specificity the justification for the  
6 confidentiality designation that was given by the Designating Party in the meet and  
7 confer dialogue.  
8

9           The burden of persuasion in any such challenge proceeding shall be on the  
10 Designating Party. Until the court rules on the challenge, all parties shall continue to  
11 afford the material in question the level of protection to which it is entitled under the  
12 Producing Party's designation.  
13

## 14 15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16           7.1 Basic Principles. A Receiving Party may use Protected Material that  
17 is disclosed or produced by another Party or by a non-party in connection with this  
18 case only for prosecuting, defending, or attempting to settle this litigation. Such  
19 Protected Material may be disclosed only to the categories of persons and under the  
20 conditions described in this Order. When the litigation has been terminated, a  
21 Receiving Party must comply with the provisions of section 11, below (FINAL  
22 DISPOSITION).  
23

24           Protected Material must be stored and maintained by a Receiving Party  
25 at a location and in a secure manner that ensures that access is limited to the persons  
26 authorized under this Order.  
27

28           7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated CONFIDENTIAL  
2 only to:

3 (a) the Receiving Party's Outside Counsel of record in this action,  
4 as well as employees of said Counsel to whom it is reasonably necessary to disclose  
5 the information for this litigation and who have signed the "Agreement to Be Bound  
6 by Protective Order" that is attached hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House  
9 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this  
10 litigation and who have signed the "Agreement to Be Bound by Protective Order"  
(Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to  
12 whom disclosure is reasonably necessary for this litigation and who have signed the  
13 "Agreement to Be Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the  
17 "Agreement to Be Bound by Protective Order" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom  
19 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound  
20 by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or  
21 exhibits to depositions that reveal Protected Material must be separately bound by the  
22 court reporter and may not be disclosed to anyone except as permitted under this  
23 Stipulated Protective Order.

24 (g) the author of the document or the original source of the  
25 information.

26 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES"

1 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
2 writing by the Designating Party, a Receiving Party may disclose any information or  
3 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only  
4 to:

5  
6 (a) the Receiving Party’s Outside Counsel of record in this action,  
7 as well as employees of said Counsel to whom it is reasonably necessary to disclose  
8 the information for this litigation and who have signed the “Agreement to Be Bound  
9 by Protective Order” that is attached hereto as Exhibit A;

10 (b) Experts (as defined in this Order) (1) to whom disclosure is  
11 reasonably necessary for this litigation, (2) who have signed the “Agreement to Be  
12 Bound by Protective Order” (Exhibit A), [and (3) as to whom the procedures set forth  
13 in paragraph 7.4, below, have been followed];

14  
15 (c) the Court and its personnel;

16 (d) court reporters, their staffs, and professional vendors to whom  
17 disclosure is reasonably necessary for this litigation and who have signed the  
18 “Agreement to Be Bound by Protective Order” (Exhibit A); and

19 (e) the author of the document or the original source of the  
20 information.  
21

22 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –  
23 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

24 (a) Unless otherwise ordered by the court or agreed in writing by  
25 the Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this  
26 Order) any information or item that has been designated “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” first must make a written request  
28 to the Designating Party that (1) identifies the specific HIGHLY CONFIDENTIAL

1 information that the Receiving Party seeks permission to disclose to the Expert,  
2 (2) sets forth the full name of the Expert and the city and state of his or her primary  
3 residence, (3) attaches a copy of the Expert's current resume, (4) identifies the  
4 Expert's current employer(s), (5) identifies each person or entity from whom the  
5 Expert has received compensation for work in his or her areas of expertise or to whom  
6 the expert has provided professional services at any time during the preceding five  
7 years, and (6) identifies (by name and number of the case, filing date, and location of  
8 court) any litigation in connection with which the Expert has provided any  
9 professional services during the preceding five years.  
10

11 (b) A Party that makes a request and provides the information  
12 specified in the preceding paragraph may disclose the subject Protected Material to  
13 the identified Expert unless, within seven court days of delivering the request, the  
14 Party receives a written objection from the Designating Party. Any such objection  
15 must set forth in detail the grounds on which it is based.  
16

17 (c) A Party that receives a timely written objection must meet and  
18 confer with the Designating Party (through direct voice to voice dialogue) to try to  
19 resolve the matter by agreement. If no agreement is reached, the Party seeking to  
20 make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7  
21 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission  
22 from the court to do so. Any such motion must describe the circumstances with  
23 specificity, set forth in detail the reasons for which the disclosure to the Expert is  
24 reasonably necessary, assess the risk of harm that the disclosure would entail and  
25 suggest any additional means that might be used to reduce that risk. In addition, any  
26 such motion must be accompanied by a competent declaration in which the movant  
27  
28

1 describes the parties' efforts to resolve the matter by agreement (i.e., the extent and  
2 the content of the meet and confer discussions) and sets forth the reasons advanced by  
3 the Designating Party for its refusal to approve the disclosure.  
4

5 In any such proceeding the Party opposing disclosure to the Expert  
6 shall bear the burden of proving that the risk of harm that the disclosure would entail  
7 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the  
8 Protected Material to its Expert.  
9

10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
11 **IN OTHER LITIGATION.**  
12

13 If a Receiving Party is served with a subpoena or an order issued in other  
14 litigation that would compel disclosure of any information or items designated in this  
15 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'  
16 EYES ONLY," the Receiving Party must so notify the Designating Party, in writing  
17 (by fax, if possible) immediately and in no event more than three court days after  
18 receiving the subpoena or order. Such notification must include a copy of the  
19 subpoena or court order.  
20

21 The Receiving Party also must immediately inform in writing the Party  
22 who caused the subpoena or order to issue in the other litigation that some or all the  
23 material covered by the subpoena or order is the subject of this Protective Order. In  
24 addition, the Receiving Party must deliver a copy of this Stipulated Protective Order  
25 promptly to the Party in the other action that caused the subpoena or order to issue.  
26

27 The purpose of imposing these duties is to alert the interested parties to  
28 the existence of this Protective Order and to afford the Designating Party in this case  
an opportunity to try to protect its confidentiality interests in the court from which the

1 subpoena or order issued. The Designating Party shall bear the burdens and the  
2 expenses of seeking protection in that court of its confidential material – and nothing  
3 in these provisions should be construed as authorizing or encouraging a Receiving  
4 Party in this action to disobey a lawful directive from another court.  
5

6  
7 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
9 Protected Material to any person or in any circumstance not authorized under this  
10 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
11 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to  
12 retrieve all copies of the Protected Material, (c) inform the person or persons to whom  
13 unauthorized disclosures were made of all the terms of this Order, and (d) request such  
14 person or persons to execute the “Acknowledgment and Agreement to Be Bound”  
15 that is attached hereto as Exhibit A.  
16  
17

18  
19 **10. FILING PROTECTED MATERIAL.** Without written permission from the  
20 Designating Party or a court order secured after appropriate notice to all interested  
21 persons, a Party may not file in the public record in this action any Protected  
22 Material. A Party that seeks to file under seal any Protected Material must comply  
23 with Civil Local Rule 79-5.  
24

25  
26 **11. FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by  
27 the Producing Party, within sixty days after the final termination of this action, each  
28 Receiving Party must return all Protected Material to the Producing Party. As used in

1 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
2 summaries or any other form of reproducing or capturing any of the Protected  
3 Material. With permission in writing from the Designating Party, the Receiving Party  
4 may destroy some or all of the Protected Material instead of returning it. Whether the  
5 Protected Material is returned or destroyed, the Receiving Party must submit a written  
6 certification to the Producing Party (and, if not the same person or entity, to the  
7 Designating Party) by the sixty day deadline that identifies (by category, where  
8 appropriate) all the Protected Material that was returned or destroyed and that affirms  
9 that the Receiving Party has not retained any copies, abstracts, compilations,  
10 summaries or other forms of reproducing or capturing any of the Protected Material.  
11 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
12 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
13 work product, even if such materials contain Protected Material. Any such archival  
14 copies that contain or constitute Protected Material remain subject to this Protective  
15 Order as set forth in Section 4 (DURATION), above.  
16  
17  
18  
19

## 20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right  
22 of any person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of  
24 this Protective Order no Party waives any right it otherwise would have to object to  
25 disclosing or producing any information or item on any ground not addressed in this  
26 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
27 ground to use in evidence of any of the material covered by this Protective Order.  
28



1  
2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3  
4 DATED: 24 January 2009 RLF  
5 Attorneys for Plaintiff CATHAY BANK  
6 Robert Louis Fisher

7 DATED: Jan 30, 2009 George G. Weickhardt  
8 Attorneys for Defendant JPMORGAN  
9 CHASE BANK  
10 George G. Weickhardt  
11 Wendy C. Krog

12 IT IS SO ORDERED

13 DATED: 2/2/09 [Signature]  
14 United States District Magistrate Judge

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] \_\_\_\_\_ in the case of \_\_\_\_\_.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_